

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MICHAEL J. RICHEY AND  
MICHAEL MORAN

Individually and on behalf of  
other similarly situated  
individuals

Plaintiffs

v.

GENESYS ASSOCIATES L.L.C.,  
ATOS ORIGIN, INC. AND ATOS  
ORIGIN IT SERVICES INC.

Defendants

308

FILED	
JUL 11 2007	
CLERK, U.S. DISTRICT COURT	By <i>[Signature]</i>
Deputy	

C.A. NO. 3-07 CV 1231-N

COMPLAINT

Plaintiffs, individually and on behalf or themselves and other similarly situated individuals, complaining of Genesys Associates L.L.C., Atos Origin, Inc. and Atos Origin IT Services Inc., would show as follows:

Parties

1. Each of Plaintiffs and other individuals similarly situated have been employed by one or more of Defendants singly or as a joint employer with another.
2. Defendant Genesys Associates L.L.C. is a Texas corporation and may be served through Ed Trachier, 2600 Network Drive Suite 330, Frisco, Texas 75034. Defendants Atos Origin, Inc. and Atos Origin IT Services, Inc. are Texas corporations and may be served through their registered agent for service of process, National Registered Agents, Inc., 1614 Sidney Baker Street, Kerrville, Texas 78028.

Jurisdiction and Venue

3. Subject matter jurisdiction of this Court over this action exists under 28 U.S.C. §1331 based on Plaintiff's federal claim under 29 U.S.C. §201 et seq., the Fair Labor Standards Act (the "FLSA"). One or more of Defendants is an employer within the meaning of the FLSA. Venue is proper because one or more of Defendants resides in this District.

Facts

4. As further described below, Defendants Atos Origin, Inc. and Atos Origin IT Services, Inc. operate data servers for various clients, with four locations in the United States, including three in Texas and one in Ohio. Defendants Atos Origin, Inc. and Atos Origin IT Services, Inc. perform related activities through unified operations or common control for a common business purpose. Defendants Genesys Associates L.L.C. and one or more other entities are contract employment providers who supplied workers to Defendants Atos Origin, Inc. and Atos Origin IT Services, Inc. for periods prior to Plaintiffs' employment as such by Defendants Atos Origin, Inc. and Atos Origin IT Services, Inc. One or more of Defendants have acted directly or indirectly in the interest of an employer in relation to Plaintiffs.

5. Plaintiffs and other individuals similarly situated were or are employed by Defendants as computer software help desk agents. As such, they have been required during their employment to work at least 40 hours per week eight hours per day at a facility of Defendants Atos Origin, Inc. and Atos Origin IT Services, Inc. and, in addition, be on call for periods beyond 40 hours from time to time under circumstances in which they cannot effectively engage in other activities, are required to cancel personal

engagements, and spend substantial portions of their time on call actually engaging in work similar to that performed during the 40 hours at the facility. More specifically, Plaintiffs and other individuals similarly situated have been required to carry a pager and be on-call and respond to all pages while on call for 24 hours per day for periods of as long as one week at a time. In most instances of on-call time, Plaintiffs and other similarly situated individuals have been required to respond to as many as 30 to 40 pages after the end of the regular eight hour workday during such on-call time without regard to the need for sleep. In some cases, the lack of sleep has caused medical problems. The total hours worked each week by Plaintiffs and similarly situated individuals, including their on-call time as a whole, have averaged over 80 hours per week for the period since April 1, 2005, and the total hours worked each week by Plaintiffs and similarly situated individuals, including only actual work performed during their on-call time, have averaged over 60 hours per week for the period since April 1, 2005.

6. None of Plaintiffs or individuals similarly situated have ever been, during employment by Defendants, an administrative, executive or professional employee, as those terms are defined under Section 213(a)(1) of the FLSA and regulations of the United States Department of Labor implementing it, including but not limited to 29 CFR 541.103, 541.206 and 542.201(b)(2), during such employment. Also, none of Plaintiffs or individuals similarly situated have been computer software employees subject to exemption under Sections 213(a)(1) and 213(a)(17) of the FLSA and Section 541.401 such regulations.

7. Defendants have failed to pay overtime compensation due Plaintiffs and other individuals similarly situated under Section 207(a)(1) of the FLSA without good faith and a reasonable belief that the failure to do so was in compliance with the FLSA and accordingly are liable for such overtime compensation and liquidated damages under Section 216(b) of the FLSA. Defendants Genesys Associates L.L.C. may be entitled to a credit for straight time for periods it paid for hours over 40 worked by Plaintiffs, but Defendants Atos Origin, Inc. and Atos Origin IT Services, Inc. never paid overtime compensation to any extent.

8. Despite applicable provisions of the FLSA, Defendants, on information and belief, during the period of the employment of Plaintiffs and individuals similarly situated, have failed to record all hours of work by Plaintiffs and other individuals similarly situated or changed the hours of time for which they paid compensation to Plaintiffs or such other similarly situated individuals from the actual time worked and reported by Plaintiffs in order to avoid the payment of overtime compensation properly due to Plaintiffs and such similarly situated individuals.

Causes of Action

9. For their first cause of action, Plaintiff and other individuals similarly situated would show that Defendants are liable under Section 216(b) of the FLSA for overtime compensation due but not paid in violation of Section 207(a)(1) of the FLSA, liquidated damages, prejudgment interest and attorney's fees and expenses and costs of court.

10. Plaintiffs are entitled to recover damages not only for the period of the otherwise applicable statutes of limitation, but for the entire period specified in

paragraphs 4 through 8, as Defendants' conduct continued over time, and Plaintiffs and other similarly situated individuals reasonably feared reprisal for complaining about such requirements and it would have been unreasonable to expect Plaintiffs to sue separately on each instance of actionable conduct. Further, Defendants sought to hide the fact that its conduct was actionable.

**Representative Action Allegations**

11. With respect to the cause of action referred to in paragraph 9, this civil action is maintainable as a representative action pursuant to Section 216(b) of the FLSA because Plaintiffs are similarly situated to others who were subject to the conduct of Defendants referred to in paragraphs 4 through 8, and who, upon the giving of notice, are entitled to intervene as plaintiffs to seek the relief to which they are entitled based on the cause of action referred to in such paragraphs.

12. Pursuant to 29 U.S.C. §216(b), each of the named Plaintiffs and, in addition, certain other individuals who have been employed by Defendants, have filed or will file consents with respect to their claims under the FLSA.

13. Plaintiffs demand a jury.

WHEREFORE, Plaintiffs pray for all relief to which they are entitled.

Respectfully submitted,



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Robert E. Goodman, Jr.  
TSB No.08158100

James N. Francis  
TSB No. 07357000

5956 Sherry Lane, Suite 800  
Dallas, Texas 75225  
(214) 368-1765  
(214) 368-3974 (telecopy)

COUNSEL FOR PLAINTIFFS

CONSENT TO BECOME PARTY PLAINTIFF

Pursuant to Section 216(b) of the Fair Labor Standards Act, 29 U.S.C. §201 et seq. (“FLSA”), and by my signature below, I hereby consent to the prosecution of claims under the FLSA on my behalf and in my name against Atos Origin, Inc. and Atos Origin IT Services, Inc., and any contract employment provider through which I was employed at either Atos Origin, Inc. or Atos Origin IT Services, Inc. I further declare that I understand that this consent is to be filed in the court in which suit on such claims is brought.

Signature: 

Name: Michael J. Richey

Address: 4900 Indian Wells Ct.  
Arlington, TX 76017

Telephone No.: 817-230-4575 home  
214-669-1890 cell

JS 44 (Rev. 7-1-92)

## CIVIL COVER SHEET 3-07 CV 1231-N

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Michael J. Richey and Michael Moran,  
Individually and on behalf of other similarly situated  
individuals

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert E. Goodman, Jr. and James N. Francis  
5956 Sherry Lane, Suite 800  
Dallas, Texas 75225 214-368-1765

## DEFENDANTS

Genesys Associates L.L.C., Atos Origin, Inc. and Atos  
Origin IT Services, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE

LAND INVOLVED  
RECEIVED

Attorneys (If Known)

JUL 11 2007

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 363 Personal Injury—Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce/ICC Rates/e.t.c.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage		<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 386 Property Damage		<input type="checkbox"/> 875 Customs or Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 387 Product Liability		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (139 5ff)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 511 Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 512 General	<input type="checkbox"/> 863 DIWC/DIW (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 513 Death Penalty	<input type="checkbox"/> 864 SSDI Title XVI	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 514 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 515 Civil Rights		
		<input type="checkbox"/> 516 Prison Condition		
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court

Transferred from another district (specify)

4 Reinstated or Reopened  5 Multidistrict Litigation

6 Docket Number  
Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

29 U.S.C. § 216(b)

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

Yes  No

VIII. RELATED CASE(S) (See instructions:  
IF ANY)

JUDGE

DOCKET NUMBER

DATE: 7/11/07 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_